APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,839	05/22/2000	Matt Ayers	52224/296056	2761

23370   7590   02/08/2007
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EXAMINER
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ART UNIT	PAPER NUMBER
2144	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	02/08/2007	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

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FEB 0 8 2007

Technology Center 2100

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/575,839
Filing Date: May 22, 2000
Appellant(s): AYERS ET AL.

Brenda O. Holmes
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 5, 2006 appealing from the Office

action mailed June 30, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,006,264   COLBY   12-1999

6,591,298   SPICER   07-2003

6,526,283   JANG   02-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-8, 10-18, 20, 21, 32-40, 42-50, 52, 53, and 64 are rejected under 35 U.S.C.

103(a) as being unpatentable over Colby et al., (hereinafter Colby) U.S. Patent No.

6,006,264, in view of Spicer et al., (hereinafter Spicer) U.S. Patent No. 6,591,298.

3.   As to claim 1, Colby teaches the invention as claimed, including a method for

directing a network client requesting access to content to one of a plurality of content servers that

can provide said content, comprising:

communication between the network client and one or more of the plurality of content

servers, then directing the network client to a said one of said content servers based on the one or

more cost measurements (col.2, lines 47-59);

Otherwise, directing the network client to a said one of said content servers based on

communication between a client that is physically proximate to the network client and one or

more of the plurality of content servers (Fig.1 shows directing the network client to content

servers). But Colby does not teach cost measurement are available that measure operational

characteristics of the network. However, Spicer teaches cost measurement are available that

measure operational characteristics of the network (col.1, lines 47-50, col.2, lines 15-45, and

col.4, line 65 to col.5, line 30). It would have been obvious to one of ordinary skill in the art at

the time of the invention was made to combine the teachings of Colby and Spicer to have a cost

measurement are available that measure operational characteristics of the network because it

would be useful to have measurements used to detect problems with content, network, a web

server, and back end system, or combinations thereof (see Spicer col.3, lines 32-35). Also Colby

does not explicitly teach first and second network client. However, Spicer teaches first and

second network client (Fig.4, 72) (see col.4, lines 30-55). It would have been obvious to one of

ordinary skill in the art at the time of the invention was made to implement the teachings of

Spicer into the computer system of Colby to have a first and second network client because it

would have provide increasing the speed of delivery of information at web site (see Spicer col.1,·

lines 20-21).

4.   A to claim 2, Colby teaches the invention as claimed, further comprising:

        obtaining a new cost measurement when said network client accesses said content server

(col.3, lines 10-27, and col.2, lines 47-58); and

        using said new cost measurement as an indicator of operational characteristics of the

network in connection with subsequent requests for access to said content that can be

provided by said content server (col.14, lines 53-67).

5.   As to claim 3, Colby teaches the invention as claimed, wherein said content servers

are associated with a network server having an identity (col.3, lines 10-27, and col.14, lines 55-

67), and wherein said network client requests content from said network server, and further

comprising:

mapping the identity of the network server (content-aware flow switch 110) to said

content servers (col.8, lines 34-55).

6.   As to claim 4, Colby teaches the invention as claimed, further comprising measuring

network performance between said network client and a said one of said content servers (col.2,

lines 47-58, and col.3, lines 10-27).

7.   As to claim 5, Colby teaches the invention as claimed, wherein an attribute of

network performance comprises network latency (col.15, lines 1-48).

8.   As to claim 6, Colby teaches the invention as claimed, wherein network latency is

measured passively by determining the time between a syn ack message sent by said network

client and an ack message sent by one of said content servers (col.8, lines 34-55, and col.3, lines

10-27).

9.   As to claim 7, Colby teaches the invention as claimed, further comprising measuring

network performance between said network client and another of said content servers (col.11,

line 60 to col.12, line 5).

10.   As to claim 8, Colby teaches the invention as claimed, further comprising

determining the location of said first network client by circular intersection (Fig.1A circular

intersection).

11.   As to claim 10, Colby teaches the invention as claimed, further comprising inferring

network performance of serving said first network client from said content server by determining

a weighted average of network performance between said content server and other network

clients based on physical proximity of said other network clients to said network client and

performance of said content server for said other network clients (col.7, line 58 to col.8, line 15,

and col.16, lines 40-65).

12.   As to claim 11, Colby teaches the invention as claimed, further comprising:

(a) measuring network latency between a content server and a plurality of other network

clients (col.17, lines 38-58, and col.18, lines 63 to col.19, line 7);

(b) determining physical distances between said other network clients and said network

client (col.7, line 58 to col.8, line 15, and col.16, lines 40-65); and

(c) computing a weighted average of said latency measurements as a function of said

distances, wherein said weighed average comprises an estimate of the latency between said

network server and said first network client (col.7, line 58 to col.8, line 15, and col.16, lines 40-

65)

(d) inferring operational characteristics associated with a plurality of network clients to

said first network client using said weighted average (see)

13.   As to claim 12, Colby teaches the invention as claimed, including a method for

directing a network client requesting access to content from a network server to one of a plurality

of content servers that can provide said content, each said content server having an address, said

network server having an identity, said method comprising:

(a) identifying a network server associated with content requested by said network client

(col.3, lines 10-28, and col.9, lines 1-35);

(b) communication between the network client and one or more of the plurality of content

servers, then directing the network client to a said one of said content servers based on the one or

more cost measurements (col.2, lines 47-59);

Otherwise, directing the network client to a said one of said content servers based on

communication between a client that is physically proximate to the network client and one or

more of the plurality of content servers (Fig.1 shows directing the network client to content

servers).

providing the network client with the address of said content server identified (col.10, lines

1-39) in step (b).

But Colby does not teach cost measurement are available that measure operational

characteristics of the network. However, Spicer teaches cost measurement are available that

measure operational characteristics of the network (col.1, lines 47-50, col.2, lines 15-45, and

col.4, line 65 to col.5, line 30). It would have been obvious to one of ordinary skill in the art at

the time of the invention was made to combine the teachings of Colby and Spicer to have a cost

measurement are available that measure operational characteristics of the network because it

would be useful to have measurements used to detect problems with content, network, a web

server, and back end system, or combinations thereof (see Spicer, col.3, lines 32-35). Also

Colby does not explicitly teach first and second network client. However, Spicer teaches first

and second network client (Fig.4, 72) (see col.4, lines 30-55). It would have been obvious to one

of ordinary skill in the art at the time of the invention was made to implement the teachings of

Spicer into the computer system of Colby to have a first and second network client because it

would have provide increasing the speed of delivery of information at web site (see col.1, lines 20-21).

14.   As to claim 32, Colby teaches the invention as claimed, including a method for inferring operational characteristics associated with a plurality of network clients to an inferable network client, comprising:

(a) measuring network latency between a network server and a plurality of network clients (col.3, lines 10-27, Fig.19, col.17, lines 38-58, col.18, line 63 to col.19, line 7, and col.15, lines 1-49);

(b) determining physical distances between said network clients and an inferable network client (col.7, line 58 to col.8, line 15, and col.16, lines 40-65); and

(c) computing a weighted average of said latency measurements as a function of said distances, wherein said weighed average comprises an estimate of the latency between said network server and said inferable network client (col.7, line 58 to col.8, line 15, and col.16, lines 40-65).

15.   Claims 33, and 44 have similar limitations a claim 1; therefore, it is rejected under the same rationale.

16.   Claims 13,14-18,20, 34,36-40, 42, 45, 46-50, 52, have similar limitations as claims 2, 4-8, and 10; therefore, they are rejected under the same rationale.

17.   Claims 11, 21, 43, 53 and 64, have similar limitations as claim 32; therefore, they are rejected under same rationale.

18.   Claim 44 has similar limitations as claim 12; therefore, it is rejected under same

rationale.

Claim Rejections - 35 USC § 103

19.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

20.   Claims 9, 19, 41, 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Colby et al., (hereinafter Colby) U.S. Patent No. 6,006,264 in view of Jang, jae-Shin.,

(hereinafter Jang) U.S. Patent No. 6,526,283.

21.   As to claim 9, Colby teaches the invention as claimed, including a method for

determining the physical location of a network client comprising:

(a) measuring the time that it takes for data to move from a plurality of network server

locations to said first network client (abstract, col.2, lines 47-67, col.17, lines 40-59, and col.20,

lines 25-39);

(b) converting said times to distance equivalents (col.15, lines 10-30).

Colby and Spicer do not explicitly teach a forming a plurality of intersecting circles using

said distance equivalents as the radius of circles with said network server locations as the center;

and determining the physical location of said network client from the intersection of said circles.

However, Jang teaches a forming a plurality of intersecting circles using said distance

equivalents as the radius of circles with said network server locations (Base stations) as the

center (col.6, lines 55-67); and determining the physical location of said network client (Mobile

telephone) from the intersection of said circles (Abstract, col.2, lines 21-36, col.4, lines 32-44, and col.4, lines 48-67). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of Colby, Spicer and Jang to have a performing a plurality of intersecting circle using distance equivalents a the radius of circle with network server locations as center and determining the physical location of client from the intersection of circle because it would have an efficient system that can provide specific degree or amount of separation between two points, lines, surfaces, or objects or an advance along a route measured linearly.

22.   Claims 9, 19, 41, 51, and 60 have similar limitations as claim 31; therefore, they are rejected under the same rationale.

(10) Response to Argument

- *Appellant argues that Spicer does not describe "cost measurement are available that measure operational characteristics of the network".*

  Examiner respectfully disagrees. Applicant argument is vague. Spicer discloses cost measurement are available that measure operational characteristics of the network as shown in col.1, lines 47-50 and col.2, lines 5-20 (*performance measurements to be collected over a network, each measurement target has an associated measurement interval specifying an approximate time between measure of the target*).

- *Appellant argues that there is lacking motivation to modify Colby with Spicer*

In response to applicant's argument that there is no suggestion to combine the

references, the examiner recognizes that obviousness can only be established by

combining or modifying the teachings of the prior art to produce the claimed

invention where there is some teaching, suggestion, or motivation to do so found

either in the references themselves or in the knowledge generally available to one of

ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir.

1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case,

It would have been obvious to one of ordinary skill in the art at the time of the

invention was made to combine the teachings of Colby and Spicer to have a cost

measurement are available that measure operational characteristics of the network

because it would be useful to have measurements used to detect problems with

content, network, a web server, and back end system, or combinations thereof (see

Spicer, col.3, lines 32-35).

- *Appellant argues that Spicer does not describe "a first client and a second*
  network client".

Examiner respectfully disagrees. Applicant argument is vague. Spicer discloses a

first client and a second network client as shown in fig.4 of Spicer and col.4, lines 30-

55 (*also connected to the network in POPs 72 are multiple users 74 and data*

acquisition agents 76).

- *Appellant argues that there is lacking motivation to modify Colby, Spicer, and Jang.*

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of Colby, Spicer and Jang to have a performing a plurality of intersecting circle using distance equivalents a the radius of circle with network server locations as center and determining the physical location of client from the intersection of circle because it would have an efficient system that can provide specific degree or amount of separation between two points, lines, surfaces, or objects or an advance along a route measured linearly.

- *Appellant argues that the Colby does not teach "determining the location of said first network client by circular intersection".*

Examiner respectfully disagrees. The Applicant argument is vague. Colby does not discloses determining the location of said first network client by circular intersection, but Jang discloses this limitation as shown in col.2, lines 21-36, col.4, lines 32-44 and

col.4, lines 48-67 (*the mobile telephone is located at the intersection point of three circle having the radius at distances between the base stations and the mobile telephone*).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.
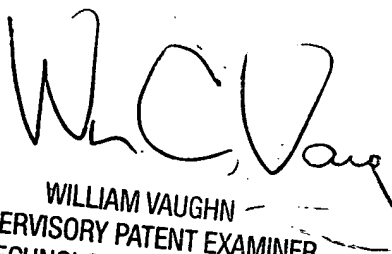
Respectfully submitted,
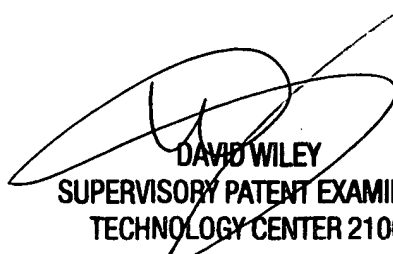
Respectfully submitted

Examiner

Art Unit 2144

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